

REMARKS/ARGUMENTS

As a result of this Preliminary Amendment, claims 17-20 are under active consideration in the subject patent application. A Request for Continuing Examination (RCE) application has been filed in conjunction with this response to the Final Official Action mailed on April 27, 2005. A PETITION FOR EXTENSION OF TIME has been filed, concurrently with this Preliminary Amendment, extending the time for response to the Official Action one (1) month, from July 27, 2005, to August 27, 2005. **The Director is hereby authorized to charge the RCE fee required under 37 CFR 1.17(e), namely \$395. 00, and the Extension fee, namely \$60.00, and any additional fees required to Deposit Account No. 04-1679.** In the Final Action, the Examiner has:

- 1) rejected claims 17-20 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter;
- 2) rejected claims 17 and 20 under 35 U.S.C. § 103(a) in view of the proposed combination of U.S. Patent No. 5,983,198, issued to Mowery et al., and U.S. Patent No. 4,615,351, issued to Schliefer et al.;
- 3) rejected claim 18 under 35 U.S.C. § 103(a) in view of the proposed combination of U.S. Patent No. 5,983,198, issued to Mowery et al., U.S. Patent No. 4,615,351, issued to Schliefer et al., and U.S. Statutory Invention Registration No. H1743, issued to Graves et al.; and

4) rejected claim 19 under 35 U.S.C. § 103(a) in view of the proposed combination of U.S. Patent No. 5,983,198, issued to Mowery et al., U.S. Patent No. 4,615,351, issued to Schliefer et al., and U.S. Statutory Invention Registration No. H1743, issued to Graves et al.

With regard to Item 1, the Examiner is incorrect in his allegation that the claims are directed to non-statutory subject matter inasmuch as the claims do not require computer implementation. This is simply not so, and the Examiner has not provided any explanation or supporting evidence (as is required under the rules) in support of this naked allegation. Applicant has amended claims 17 and 19 so as to more distinctly point out that the methods are computer implemented. Reconsideration and withdrawal of the rejection of claims 17-20 under 35 U.S.C. §101, are respectfully requested.

With regard to Items 2-4, the Examiner has relied upon U.S. Patent No. 5,983,198, issued to Mowery et al., as the underlying basis for all of the substantive rejections presented in the Official Action mailed on April 27, 2005. The Mowery patent issued on November 9, 1999, from Application Serial No. 08/636,289, filed April 23, 1996. Thus the Mowery reference issued less than one year from the earliest filing date claimed by the instant application. The claims of the Mowery reference are directed to a wholly distinct and separate invention when compared to Applicant's claimed invention. Applicant respectfully submits that the Mowery reference is not valid prior art with respect to the instant Application, since the present invention was conceived prior to April 23, 1996,

and Applicant worked diligently to an actual reduction to practice of his invention in September of 1998, when a working embodiment that was suitable for its intended purpose was completed at the Nucor facility in Darlington, South Carolina.

In support of Applicant's position that the Mowery reference is not valid prior art, an Affidavit under 37 C.F.R. 1.131, including exhibits A-L, executed by the inventor David B. Wallace, is attached to this Preliminary Amendment. This Rule 1.131 Affidavit of David B. Wallace and its supporting Exhibits and Affidavits provide ample factual documentary evidence of Applicant's conception of his invention prior to April 23, 1996, and of his diligence in moving from conception to a reduction to practice. Accordingly, the Mowery reference is not valid prior art with respect to Applicant's invention.

Since the Mowery reference cannot be said to be valid prior art, any combination of the Mowery reference with the disclosure in U.S. Patent No. 4,615,351, issued to Schliefer et al., or U.S. Statutory Invention Registration No. H1743, issued to Graves et al., is invalid, and must be withdrawn by the Examiner. Reconsideration and withdrawal of the rejection of claims 17-20 under 35 U.S.C. §103, are respectfully requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Appl. No: 10/085,396
Docket No.: D4865-00004
RCE Preliminary Amendment

If a telephone conference would be of assistance in advancing prosecution of the above-identified application, Applicants' undersigned Attorney invites the Examiner to telephone him at 717-237-5516.

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Respectfully Submitted,



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